

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: SHUBH HOTELS PITTSBURGH, LLC, Debtor.	Bankruptcy Case No.: 10-26337 JAD Chapter 11 Judge Jeffrey A. Deller
DR. KIRAN C. PATEL, and PITTSBURGH GRAND, LLC, Objectors, v. SHUBH HOTELS, LLC, Claimant.	Related Docket No.: 991, 2059, 2153, 2204 Claim No. 68 Hearing Date: March 27, 2012 Hearing Time: 10:00 a.m.

**CLAIMANTS' RESPONSE AND MEMORANDUM IN OPPOSITION
TO OBJECTORS' SUPPLEMENTARY BRIEF**

Claimant, SHUBH HOTELS, LLC ("HOTELS") by and through undersigned counsel, hereby files its Response and Memorandum in Opposition to Objectors' Supplementary Brief [DE 2204], and in support thereof states as follows:

1. Incorporation by Reference to Prior Response: HOTELS incorporates by reference herein its *Motion to Strike, and Alternative Response and Memorandum in Opposition to Objectors' Motion for Summary Judgment on Objection to Claim No. 68 of Shubh Hotels LLC*. [DE 2184].

2. Material Issues of Fact Preclude Entry of Summary Judgment: OBJECTORS rely solely upon *Scott v. Harris*, 550 U.S. 372 S. Ct. 1769 (2007) for the proposition that a party's personal belief cannot contradict undisputed record evidence; in that case, the dashboard video camera in a police vehicle. In the instant action, we do not have such irrefutable evidence. What is presented in this case, however, are records and accountings provided by CLAIMANT'S

representatives which meticulously detail the money flow between the Debtor and CLAIMANT.¹ There is absolutely no record evidence to support the proposition that the funds were equity investments or capital contributions. Neither CLAIMANT, nor any other party received any membership or other interest in the Debtor from the funds outlined in Claim No. 68. CLAIMANT never held an equity interest in the Debtor. CLAIMANT did not receive any consideration for its loans in the form of equity ownership in the Debtor. This Court cannot reclassify a loan as a equity contribution, when no such consideration was given.

Furthermore, OBJECTORS relied upon *In re Machine Menachem, Inc.*, 2012 WL 8570 (3d Cir. 2012) in their initial brief in support of summary judgment. [DE 2153]. One of the *Machine Menachem* factors of determining whether funds are a loan or a capital contribution is the parties intent. *Id.* The record evidence establishes that CLAIMANT is in the business of loaning money to and from each of the Shubh hotels. The undisputed record evidence establishes that CLAIMANT'S made the transfers outlined in Claim No. 68 to DEBTOR with the intention of creating loans from CLAIMANT to the Debtor.²

3. Conclusion: For the reasons stated herein, this Court must deny the Trustee's Motion for Summary Judgment.

¹ The record evidence establishes that although the majority of the funds comprising of Claim No. 68 passed through Bisaria or third parties to the Debtor, the funds were owed to CLAIMANT, and CLAIMANT exclusively, as a loan.

² . See Bisaria Dep. at 22:12-19; 40:3-42:17; 45:3-46:22; 92:12-14; 120:9-121:18; 144:10-25; 146:17-148:10; 150:1-23; 170:16-25

Dated: April 19, 2012

Respectfully Submitted,

/s/ Keith T. Grumer

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Admitted *Pro Hac Vice*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 19th day of April 2012, *via* ECF/CM to all parties hereto.

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